

Attorney Docket No.: DEX-0154
Inventors: Sun et al.
Serial No.: 09/762,027
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REMARKS

Claims 1-14 are pending in the instant application. Claims 1-9, 13 and 14 have been withdrawn from consideration by the Examiner and subsequently canceled, without prejudice, by Applicants in this amendment. Claims 10-12 have been rejected. Claims 10 and 11 have been amended. Support for these amendments is found in the specification at page 10, line 30, through page 11, line 27, page 3, lines 1-8, page 6, lines 2-9, and page 13, line 22 through page 14, line 19. No new matter is added by this amendment. Reconsideration is respectfully requested in light of these amendments and the following remarks.

I. Finality of Restriction Requirement

The Examiner has made final the Restriction Requirement mailed September 26, 2002. Accordingly, in an earnest effort to facilitate the prosecution of this case, Applicants have canceled without prejudice claims 1-9, 13 and 14, drawn to non-elected subject matter. In light of the finality of this Restriction Requirement, Applicants reserve the right to file a divisional application to the canceled subject matter.

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II. Rejection of Claim 10 under 35 U.S.C. 101

Claim 10 has been rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. The Examiner suggests that because the claim does not recite a purity or size limitation, the claim reads on naturally occurring antibodies that bind with the polypeptide encoded by SEQ ID NO:4. Thus, in an earnest effort to advance the prosecution of this case and in accordance with the Examiner's suggestion, Applicants have amended claim 10 to state that the antibody is an isolated antibody. Withdrawal of this rejection under 35 U.S.C. 101 is therefore respectfully requested.

III. Rejection of Claims 10-12 under 35 U.S.C. 112, second paragraph

Claims 10-12 have been rejected under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the Examiner suggests that the claims are indefinite over the recitation of "an antibody against a BSG wherein said BSG comprises . . . Mam004 (SEQ ID NO:4) because it is unclear whether the claims intend to refer to antibodies that

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bind with the mRNA molecule or the protein encoded thereby. The Examiner also suggests that it is unclear what is meant by antibody "against" SEQ ID NO:4.

Therefore, in an earnest effort to advance the prosecution and in accordance with the Examiner's suggestion, Applicants have amended claim 10 to state that the antibody specifically binds Mam004 (SEQ ID NO:4) or a protein expressed by Mam004 (SEQ ID NO:4). Support for this amendment can be found at page 10, line 30, through page 11, line 27 of the specification wherein antibodies specifically binding or specific to a BSG are taught and at page 3, lines 1-8 and page 6, lines 2-9 of the specification wherein it is taught that by BSG it is meant the polynucleotide or the protein expressed the polynucleotide.

Further, with respect to claims 11-12, the Examiner suggests that these claims are indefinite because they fail to recite the active process steps that result in imaging breast cancer. Accordingly, in an earnest effort to advance the prosecution and in accordance with teachings at page 13, line 22 through page 14, line 19, Applicants have amended claim 11 to include the active process steps for imaging breast cancer.

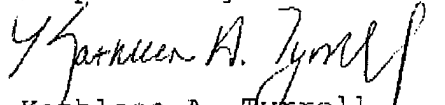
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Withdrawal of these rejections under 35 U.S.C. 112, second paragraph, is respectfully requested in light of the amendments to the claims.

IV. Conclusion

Applicants believe the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,


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Date: April 15, 2003

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